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HIGH COURT OF CHHATTISGARH AT BILASPUR

CORAM : Hon'ble Shri H.L.Dattu, Chief Justice &
Hon'ble Shri V.K.Shrivastava, Judge

Writ Petition No.1242 of 1998

ORDER FOR CONSIDERATION

Sd/-
Chief Justice

31/03/2007

HON'BLE SHRI V.K. SHRIVASTAVA, J.

I agree

Sd/-
V.K. Shrivastava
Judge

/04/2007

POST FOR PRONOUNCEMENT
OF THE ORDER : 03/04/2007

Sd/-
Chief Justice

02/04/2007

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HIGH COURT OF CHHATTISGARH AT BILASPUR
DIVISION BENCH

CORAM : **HON'BLE SHRI H.L. DATTU, C.J. &**
HON'BLE SHRI V.K. SHRIVASTAVA, J.

Writ Petition No.1242 of 1998

Petitioner Udhaw Ram Sharma, S/o Shri Ram Ratan Sharma, aged about 54 years, First Grade Clerk (Assistant Grade II), Collectorate, Sarguja, R/o Devi-gunj, Government Quarter No.R.C.15/5, Ambikapur, District Sarguja (M.P.)

Versus

Respondents

1) State of Madhya Pradesh through Secretary, Department of Revenue, Mantralaya, Vallabh Bhawan, Bhopal
2) The Collector, Sarguja (Ambikapur), District Sarguja (M.P.)
3) Principal Secretary, Govt. of M.P. Revenue Department, Mantralaya, Vallabh Bhawan, Bhopal
4) The Secretary, Govt. of M.P., Department of Revenue, Mantralaya, Vallabh Bhawan, Bhopal (M.P.)
5) Deputy Secretary, Govt. of M.P., Department of Revenue, Mantralaya, Vallabh Bhawan, Bhopal (M.P.)
6) Shri Pravir Krishn, the then Collector, Sarguja, at present Collector, Bastar, Collectorate, Bastar (M.P.)
7) The State Administrative Tribunal, Principal Bench, Jabalpur through its Registrar

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Present : Shri Amrito Das, counsel for the petitioner.
Shri Sanjay S. Agrawal, G.A. for the State.

ORDER

(Passed on 03rd April, 2007)

The following order of the Court was passed by **H.L Dattu, C.J.**

In this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner primarily calls in question the common order passed by the State Administrative Tribunal, Jabalpur Bench, Jabalpur ('the Tribunal' for short) in O.A.No.1089 of 1989 connected with O.A.No.2507 of 1996, dated

28.02.1998. By the impugned order, the Tribunal has rejected both the original applications filed by the applicant/petitioner. In order to appreciate the contentions canvassed by Shri Amrito Das, learned counsel appearing for the petitioner reference to the facts of the case in extenso requires to be made.

(2) The factual matrix is as under :

The petitioner was appointed as Class I Clerk in the office of the Collector, Sarguja (Ambikapur). He was kept under suspension pending departmental enquiry on 12.09.85. After holding an enquiry as envisaged under the M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 ('the Rules, 1966' for short) and in accordance with the principles of natural justice, an order came to be passed by the disciplinary authority dismissing the petitioner from service on 02.04.87.

(3) The petitioner being aggrieved by the aforesaid order had questioned the same before the Tribunal in O.A.No.667 of 1988. The Tribunal by its order dated 15.02.89 was pleased to set aside the order of dismissal passed by the disciplinary authority and ordered for a fresh enquiry. At this stage itself, it would be proper to notice the reasons assigned by the Tribunal for setting aside the order of dismissal passed by the disciplinary authority. One of the reasons assigned by the Tribunal was that the enquiry officer after completion of the enquiry proceedings had not asked the delinquent official to offer his explanation, if any, as contemplated under sub-rule 18 of Rule 14 of the Rules, 1966. Secondly, the enquiry officer ought to have examined the District Magistrate, who had alleged, that, the petitioner had forged the signature of the Executive Magistrate, Ambikapur. The Tribunal had further observed in its order that criminal cases are filed against the petitioner for the very same offence alleged in the charge memo and those cases are pending, and therefore, the enquiry officer should keep his enquiry proceedings in abeyance till the criminal proceedings are over or in the alternative to consider the application of the petitioner filed for seeking appointment of a legal practitioner

to defend him in the enquiry proceedings. While disposing of the application, the Tribunal in our opinion, had inadvertently used the expression 'to hold a fresh enquiry' and thereafter had remanded the matter to the disciplinary authority.

(4) It appears that by an order dated 29.03.89, the disciplinary authority had passed a fresh order keeping the petitioner under suspension pending departmental enquiry and the order was given effect to from the date of the order of dismissal. Aggrieved by that order, the petitioner had once again approached the Tribunal in O.A.No.1098 of 1989. When the matter was pending before the Tribunal, it is stated in the petition, that the petitioner had moved an application/representation before the State Government inter alia requesting the Govt. to revoke the order of suspension passed by the Collector dated 29.03.89. It appears that the Under Secretary to the State Government had passed the order dated 02.07.96 revoking the order of suspension passed by the Collector dated 29.03.89 and by that order he had not only directed the respondents to reinstate the petitioner into service and also keep all the departmental enquiry proceedings in abeyance till the criminal cases against the petitioner are decided in one way or the other. Pursuant to the order passed, it appears that the petitioner had reported for duty in the place he was originally working prior to the order of suspension passed.

(5) It is further stated in the petition that since there were certain criminal cases against the petitioner and he had been arrested for more than 48 hours, and therefore a fresh suspension order was passed on 23.09.96 and the petitioner has questioned the said order before the State Administrative Tribunal by filing application, O.A.No.2507 of 1996.

(6) During the pendency of the proceedings before the Tribunal, the respondents have passed yet another order dated 22.01.97, revoking the order passed by the Under Secretary to the State Government dated 02.07.96. The

petitioner being aggrieved by the said order of revocation passed, has filed an application for amendment of the pleadings and also for additional prayer in O.A.No.2507 of 1996.

(7) Since the parties were common and the issues were more or less similar, the Tribunal had thought it fit to club the O.A. Nos. 1089 of 1989 and 2507 of 1996 for its consideration and decision. After a detailed discussion, the Tribunal has rejected both these application by its order dated 28.08.1998. It is the correctness or otherwise of the said order is the subject matter of this writ petition.

(8) Shri Amrito Das, learned counsel appearing for the petitioner would submit that the respondents after passing a detailed order dated 02.07.1996 revoking the order of suspension dated 29.03.1989, could not have revoked the same by passing a cryptic order dated 22.01.1997. Alternatively, it is contended that the order passed by the respondents dated 22.01.1997 does not contain any reasons and therefore is arbitrary, unfair and unjust and violative of Article 14 of the Constitution of India and unfair procedure offending Article 21 of the Constitution of India. Elaborating this contention the learned counsel would submit that the fair play requires recording of germane and relevant precise reasons, when it affects the rights of the petitioner and since the order contains no reasons, the same is no order in the eye of law and therefore, the Tribunal was not justified in sustaining the orders passed by the respondents dated 22.01.1997.

(9) The learned counsel by inviting our attention to sub-Rule 4 of Rule 9 of the Rules, 1966 would submit, that, the rule contemplates that it should be the authority competent to place a Government servant under suspension to decide as to whether a further enquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally proposed, then only a Government employee would be deemed to be under suspension.

In the instant case, since the Tribunal had directed that the competent authority shall hold a fresh departmental enquiry and therefore, there was no discretion left with the disciplinary authority to hold further enquiry under sub-rule 4 of Rule 9 of the Rules, 1966 and therefore, invoking the said provision applicant could not have been kept under suspension.

(10) In regard to the first contention canvassed by learned counsel for the petitioner, in our view, it is devoid of merits. It is no doubt true, that an order had been passed by the State Government revoking the order of suspension passed by the disciplinary authority dated 29.03.1989. The order so made, was, firstly, contrary to sub-rule 4 of Rule 9 of the Rules, 1966 though in the order reference is made to the orders passed in O.A. No.1089 of 1989 and connected matter. It is a mistake and the applicant cannot take advantage of such a mistake. Secondly, in the context of the administrative decision, its order and decision may not contain the reasons, but it may be available in the records, but at this length of time and because of the bifurcation of Madhya Pradesh State, it may not be possible to secure the records to find out whether the reasons are forthcoming from the records. Therefore, we may presume that the records would contain reasons for the decision. Even otherwise also, it is not required that the reasons should be as elaborate as in the decision of a Court of law. The reasons may be precise, but still it may convey what weighed in the mind of the authority while passing the order and therefore, every case has to be judged in the light of its own facts and circumstances. Keeping this view in background, if we look at the order passed by the authority dated 22.01.1997, we cannot hold that it does not contain any reasons and therefore, arbitrary, unfair and unjust. Therefore, first limb of the argument canvassed by the learned counsel has no merit.

(11) Secondly, the authority who has passed the order has the authority to withdraw his earlier order, if for any reason, the same is in conflict with the settled legal principles or contrary to the rules or contrary to the decision of

jurisdictional Court. But, before recalling or reviewing its earlier order, the only requirement is that a person against whom such an order requires to be passed should be heard in the matter. It is not the case of the petitioner's learned counsel that the authority before passing the order dated 22.01.1997 had not issued any notice to the petitioner. Therefore, it cannot be said that the State had no competence to pass the order dated 22.01.1997.

(12) The learned counsel for the petitioner would further contend that the Tribunal while disposing of the petitioner's application No.667 of 1988 has specifically directed that the departmental enquiry be held afresh and according to the learned counsel that only means that there was no discretion left with the disciplinary authority, but to hold a fresh enquiry and not to hold further enquiry and therefore, sub-rule 4 of Rule 9 of the Rules, 1966 would not be applicable in the present case and therefore, petitioner cannot be said to be under deemed suspension. In order to resolve the controversy the rule requires to be noticed and omitting what is not necessary, the relevant rule is extracted. The same reads as under :

> "Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant, is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further enquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders."

(13) The applicant before the Tribunal had questioned the orders passed by the disciplinary authority dated 02.04.1987 dismissing the petitioner from

service under the M.P. (CCA) Rules 1966. The Tribunal has allowed the application on the ground of procedural irregularities said to have been committed by the enquiry officer and has directed the disciplinary authority to hold a fresh enquiry. It is the contention of the learned counsel for the petitioner that when the Tribunal had directed a fresh enquiry to be held, the deemed provision contemplated under sub-rule 4 of Rule 9 of the Rules 1966 cannot be applied and further it cannot be presumed that the Government servant is deemed to be under suspension. The argument advanced, at the first flash looks attractive, but on a deeper consideration, it has no merit. The Tribunal while passing the order in application No.667 of 1988 has no doubt used the expression 'afresh' while directing the disciplinary authority to hold an enquiry and not 'further' enquiry. The expression so used by the Tribunal may be a mistake made inadvertently. In the context in which it is used is understood, the Tribunal had directed the disciplinary authority to hold a further enquiry from the stage the defects are noticed by them in the proceedings of the enquiry officer. If it is understood in the manner and in fact requires to be understood only in that manner, the disciplinary authority was wholly justified in invoking the provisions of sub-rule 4 of Rule 9 of the M.P. (CCA) Rules, 1966.

(14) In view of the aforesaid discussion, we are of the view that the Tribunal has not committed any error whatsoever which would call for our interference. Accordingly, petition requires to be rejected and it is rejected. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge